

**Air Pollution Control
Federal Clean Air Act (CAA) Title V Permit to Operate
Statement of Basis for Draft Permit No. V-SV-000001-2016.00**

**Waste Management of Utah, Inc.
Tekoi Landfill
Skull Valley Indian Reservation
Tooele County, Utah**

I. Facility Information

A. Location

The Tekoi Landfill (TLF) is owned and operated by Waste Management of Utah, Inc. (WM) and is located within the exterior boundaries of the Skull Valley Band of Goshute Indian Community, in the north-central part of the State of Utah. The exact location is Section 18, Township 5 South, Range 8 West, Tooele County, Utah. The mailing address is:

Tekoi Landfill
Waste Management of Utah, Inc.
6976 West California Ave
Salt Lake City, UT 84104

B. Contact

Brad Kloos, District Manager
Waste Management of Utah, Inc.
6976 West California Avenue
Salt Lake City, Utah 84104
Phone: (801) 731-5542
Fax: (801) 250-8549

C. Description of Operations

The TLF, which is owned by the Skull Valley Band of Goshute Indian Community and operated by WM, serves as a regional municipal solid waste (MSW) and construction and demolition (C&D) debris disposal facility.

The Initial Title V Operating Permit for the TLF was issued by the United States Environmental Protection Agency Region 8 (EPA) and became effective on September 22, 2011. The 5-year permit term expires on September 22, 2016. The application for renewal of the permit was prepared by SCS Engineers (SCS) on behalf of WM.

No hazardous wastes or infectious wastes are accepted for disposal, nor is the incineration of waste permitted. TLF currently accepts approximately 750 tons of waste per day (tpd); however, it is permitted to accept a maximum of 4,000 tpd.

The landfill is comprised of a 6-phase MSW disposal area, as well as two C&D disposal areas. The MSW portion of the landfill was operated as a balefill landfill until November 2010. A balefill is a type of landfill in which MSW is mechanically baled before being placed in the MSW disposal area. The bales were approximately 45" x 45" x 60" and weighed approximately 4,000 pounds. TLF has not conducted balefill operations for several years and does not expect to

resume such operation in the future. Therefore, WM has requested that any reference to such operation be removed from the Title V Permit. The site now accepts only loose (unbaled) MSW. The method of disposal has no effect on landfill emissions.

D. Emission Points

Table 1 lists emission units and emission generating activities, including any air pollution control devices. The Title V Operating Permit Program at 40 CFR part 71 (Part 71) allows the Permittee to separately list in the permit application units or activities that qualify as “insignificant” based on potential emissions below 2 tons per year (tpy) for all regulated pollutants that are not listed as hazardous air pollutants (HAPs) under section 112(b) and below 1,000 lbs/year or the de minimis level established under section 112(g), whichever is lower, for HAPs. However, the application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. Units and activities that qualify as “insignificant” for the purposes of the Part 71 application are in no way exempt from applicable requirements or any requirements of the Part 71 permit.

Table 1 – Emission Units and Emission Generating Activities

Unit I.D.	Description	Control Equipment
E1	MSW Landfill: 45 million cubic meters design capacity. Construction Date: 01/14/2005	NA (NMOC* <50 Mg/year)
E2	Fugitive Dust Emissions from Paved Roads, Unpaved Roads, and Material Handling.	NA

*Non-methane organic compound (NMOC)

Table 2 - Insignificant Emission Units*

Emission Unit ID	Description
IE1	Isuzu; 89 hp diesel-fired stationary compression ignition engine. Construction Date: Pre June 12, 2006; Manufactured 2000. Use: ~140 hrs/year; Non-emergency diesel fuel pump.
IE2	John Deere (6.8L); 165 hp diesel-fired stationary compression ignition engine. Construction Date: Pre June 12, 2006; Manufactured 2002. Use: ~420 hrs/year; Non-emergency generator to power lights.
IE3	Honda; 13 hp gas-powered spark ignition engine. Model Year: 2014. Use: ~420 hrs/year; Non-emergency water pump.
IE4	1 - 12,000 gallon diesel fuel tank.

*Insignificant emission units can change at the facility as long as the new or replacement units meet the criteria for insignificance, and TLF supplies information as required under 40 CFR part 71 and this permit. The insignificant emission unit status does not exempt these emission units from the requirements of the NSPS and MACT standards that may apply.

E. Potential to Emit

Pursuant to 40 CFR 52.21, potential to emit (PTE) is defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation, or the effect it would have on emissions, is federally enforceable. Independently enforceable applicable requirements are considered enforceable to the extent that the source is in compliance with the

standard. In addition, beneficial reductions in non-targeted pollutants resulting from compliance with an independently enforceable applicable requirement may be counted towards PTE provided the emission reduction of the non-targeted pollutant is enforceable as a practical matter and the source is complying with the requirement. See the 1995 guidance memo signed by John Seitz, Director of the Office of Air Quality Planning and Standards titled, “Options for Limiting Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act.”

The TLF does not currently have a gas collection and control system (GCCS) for landfill gas (LFG) emissions. Under the New Source Performance Standards (NSPS) for MSW Landfills at 40 CFR, Part 60, subpart WWW (NSPS WWW), landfill owners/operators are required to install a GCCS when the landfill design capacity is greater than 2.5 million megagrams (Mg) by mass and 2.5 million cubic meters by volume (MMm^3v) and the NMOC emission rate is greater than 50 Mg per year (Mg/yr). TLF has a design capacity of approximately 45 MMm^3v for MSW disposal. As required by NSPS WWW, an initial design capacity report was submitted to the EPA on March 31, 2008; and an NMOC emission rate for the landfill was calculated using the procedures specified in 40 CFR 60.754. The calculated annual NMOC emission rate was determined using the EPA’s Landfill Gas Emissions Model (*LandGEM [Version 3.02]*). The annual rate was projected to exceed 50 Mg/yr, triggering the additional requirements specified in 40 CFR 60.752(b)(2) as of March 10, 2008, the date the annual rate report was submitted.

Tier 2 field sampling activities, as allowed under NSPS WWW, were initially conducted in June 2008. The report concluded the estimated annual NMOC emission rate would exceed 50 Mg/yr in 2009. Subsequent Tier 2 testing has been conducted at the site, most recently in 2013. The results were submitted to the EPA in a January 2014 report. The Tier 2 NMOC concentration of 965 parts per million by volume (ppmv) of hexane was used to calculate annual NMOC emission rates, which were determined to be less than 50 Mg/yr for the 5-year period from 2013 through 2017. This Tier 2 NMOC concentration value is used in this application for emission calculations. Per NSPS WWW, this Tier 2 concentration is valid for up to 5 years. As such, additional Tier 2 testing will be required in 2018.

When the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, TLF will be required to submit a GCCS design plan signed by a professional engineer within one year and install a GCCS that captures the gas generated within the landfill within 30 months after the first annual report in which the emission rate equals or exceeds 50 Mg/yr. TLF will comply with these requirements when NMOC emissions exceed 50 Mg/yr using Tier 2 methods. Fugitive PTE related to LFG will decrease considerably after the GCCS is installed.

The year in which NMOC emissions will likely first exceed 50 Mg/year will be 2017 based on expected growth calculations provided in the application. A GCCS will be required to go online within 30 months of this date or by 2020. Under this scenario, 2019 is expected to be the last year when LFG emissions would be completely uncontrolled under the NSPS scenario. Beginning earliest in 2020, the NSPS-required GCCS would reduce NMOC emissions by 65% to 85%, as specified in the NSPS (default value is 75%).

Table 3 – Potential-to-Emit With Legally and Practically Enforceable Controls

Regulated Air Pollutants (tpy)											
	NO _x	CO	VOC	PM	SO ₂	CH ₂ O	Total HAPs	NMOC	CH ₄ (as CO _{2e})	N ₂ O (as CO _{2e})	CO ₂ and CO _{2e}
E1	0	0	94.1	0	0		4.9	241.4	106,177	0	0
E2	NA	NA	NA	NA	NA	NA	NA	NA	0	0	0
TOTAL	0	0	94.4	0	0		4.9	241.1	106,177	0	0

Note: NO_x = nitrogen oxide; CO = carbon monoxide; VOC = volatile organic compound; PM = particulate matter; SO₂ = sulfur dioxide; CH₂O = formaldehyde; HAP = hazardous air pollutant; CO₂ = carbon dioxide; CH₄ = methane; N₂O = nitrous oxide; CO_{2e} = equivalent CO₂;

II. Applicable Requirement Review

The following sections discuss the information provided by WM in their Part 71 renewal application, certified to be true and accurate by the Responsible Official of this facility.

A. **40 CFR 52.21: Prevention of Significant Deterioration**

The Prevention of Significant Deterioration (PSD) Permit Program at 40 CFR part 52 is a preconstruction review requirement of the CAA that applies to proposed projects that are sufficiently large (in terms of emissions) to be a “major” stationary source or “major” modification of an existing stationary source. Source size is defined in terms of “PTE,” which is its capability at maximum design capacity to emit a pollutant, except as constrained by existing legally and practically enforceable conditions applicable to the source. A new stationary source or a modification to an existing minor stationary source is major if the proposed project has the PTE any pollutant regulated under the CAA in amounts equal to or exceeding specified major source thresholds, which are 100 tpy for 28 listed industrial source categories and 250 tpy for all other sources. The PSD Permit Program also applies to modifications at existing major sources that cause a “significant net emissions increase” at that source. Significance levels for each pollutant are defined in the PSD regulations at 40 CFR 52.21.

According to the emissions information provided by WM in their Part 71 application, the TLF is currently a minor source of emissions that is not subject to the PSD Permit Program, as the PTE does not exceed the major source thresholds of any criteria pollutants regulated under the PSD Permit Program.

B. **40 CFR Part 60, Subpart WWW: Standards of Performance for Municipal Solid Waste Landfills**

This rule applies to MSW landfills that commenced construction, reconstruction or modification on or after May 30, 1991.

The TLF is a MSW landfill that commenced construction, reconstruction or modification on or after May 30, 1991, with a design capacity of 45 MMm³; therefore, 40 CFR part 60, subpart WWW applies.

NMOC emissions are projected to be below 50 Mg/yr until the year 2017. Therefore, there is not currently a requirement for the landfill to capture and control LFG emissions. If at any time the NMOC emission rate calculated by the procedure in subpart WWW is equal to or greater than 50 Mg/yr the permittee will need to comply with the applicable requirements for installing, operating,

and maintaining a GCCS, as well as applying for a significant permit modification to incorporate the requirements to capture and control LFG emissions pursuant to 40 CFR 60.752(b)(2).

Pursuant to 40 CFR 60.752(c), the facility is required to obtain a Part 71 operating permit because its design capacity is greater than 2.5 MMm³v.

C. 40 CFR Part 60, Subpart IIII: Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

This rule applies, in part, to owners and operators of stationary compression ignition (CI) internal combustion engines (ICE) that commence construction after July 11, 2005 where the stationary CI ICE are:

- a. Manufactured after April 1, 2006 and are not fire pump engines, or
- b. Manufactured as a certified National Fire Protection Association (NFPA) fire pump engine after July 1, 2006.

For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

This subpart also applies to owners and operators of stationary CI ICE that modify or reconstruct their stationary ICE after July 11, 2005.

According to the information provided by WM, emission units IE1, and IE2 were constructed prior to 2007 with a displacement of less than 10 liters per cylinder. The IE1 is an Isuzu 89 hp diesel-fired stationary compression ignition engine manufactured in 2000, while IE2 is a John Deere, 165 hp diesel-fired stationary compression ignition engine that was manufactured in 2002. IE1 is a non-emergency diesel fuel pump engine, and IE2 is used as a non-emergency generator engine to power lighting. Therefore, emission units IE1 and IE2 are subject to the requirements of NSPS IIII.

D. 40 CFR Part 60, Subpart JJJJ: Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

This subpart establishes emission standards and compliance requirements for the control of emissions from stationary spark ignition internal combustion engines that commenced construction, modification, or reconstruction after June 12, 2006, and are manufactured on or after specified manufacture trigger dates. The manufacture trigger dates are based on the engine type, fuel used, and maximum engine hp.

According to information provided by WM in their Part 71 application, emission unit IE3 operating at the TLF is a 13 hp Honda Water Pump engine that was manufactured after the manufacture trigger date in the rule, January 1, 2008. Therefore, emission unit IE3 is subject to the requirements of NSPS JJJJ.

E. 40 CFR Part 63, Subpart AAAA: National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills

This rule establishes national emission standards for hazardous air pollutants (NESHAP) for

existing and new MSW landfills that have accepted waste since November 8, 1987 or have the additional capacity for future waste deposition.

According to WM, the TLF is a MSW landfill that is currently accepting waste and is an area source of HAP emissions that has a design capacity equal to or greater than 2.5 MMm³; therefore, this subpart applies to the facility.

F. 40 CFR Part 63, Subpart ZZZZ (MACT ZZZZ): National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (RICE)

This subpart establishes emission standards and operating limitations for the control of HAP emissions from spark ignition and compression ignition RICE.

According to the information provided by WM in their Part 71 application, a stationary Isuzu diesel engine (IE1) with 89 hp and a stationary John Deere diesel engine (IE2) with 165 hp operating at the TLF were both constructed before June 12, 2006. These two engines are operating at an area source of HAP emissions. According to information provided by WM in their Part 71 application, emission units IE1 and IE2 are subject to the requirements for non-emergency stationary compression ignition RICE.

G. 40 CFR Part 64: Compliance Assurance Monitoring

Pursuant to requirements concerning enhanced monitoring and compliance certification under the CAA, the EPA promulgated regulations to implement compliance assurance monitoring (CAM) for major stationary sources of air pollution, for purposes of Title V permitting that are required to obtain operating permits under Part 71. The rule requires owners or operators of such sources to conduct monitoring that provide a reasonable assurance of compliance with applicable requirements under the CAA. The effective date of this rule is November 21, 1997.

1. CAM Applicability

According to 40 CFR 64.2(a), CAM applies to each pollutant specific emission unit (PSEU) located at a major source which is required to obtain a Part 71 permit if the unit satisfies all of the following criteria:

- (a) The unit is subject to an emission limitation or standard for the applicable regulated air pollutant other than an emissions limitation or standard that is exempt under 40 CFR 64.2(b)(1);
- (b) The unit uses a control device to achieve compliance with any such limit or standard; and
- (c) The unit has pre-control device emissions of the applicable regulated pollutant that are equal to or greater than 100 percent of the amount, in tpy, required for a source to be classified as a major Title V source.

2. CAM Plan Submittal Deadlines

- (a) Large PSEUs. A CAM plan submittal for all PSEUs with the PTE (taking into

account control devices) of any one regulated air pollutant in an amount equal to or greater than 100 percent of the amount, in tpy, required for a source to be classified as a major source, is due at the following times:

- (i) On or after April 20, 1998, if by that date, a Part 71 application has either:
 - (A) Not been filed; or
 - (B) Not yet been determined to be complete.
 - (ii) On or after April 20, 1998, if a Part 71 permit application for a significant modification is submitted with respect to those PSEUs for which the requested permit revision is applicable; or
 - (iii) Upon application for a renewed Part 71 permit and a CAM plan has not yet been submitted with an initial or a significant modification application, as specified above.
- (b) Other PSEUs. A CAM Plan must be submitted for all PSEUs that are not large PSEUs, but are subject to this rule, upon application for a Part 71 renewal permit.

According to information provided by WM in their Part 71 application, there are currently no PSEUs at the TLF that are subject to an emission standard or limitation. Therefore, the facility is not subject to CAM requirements.

H. 40 CFR Part 68: Chemical Accident Prevention Provisions

This rule applies to stationary sources that manufacture, process, use, store, or otherwise handle more than the threshold quantity of a regulated substance in a process. Regulated substances include 77 toxic and 63 flammable substances which are potentially present in the natural gas stream entering the facility and in the storage vessels located at the facility. The quantity of a regulated substance in a process is determined according to the procedures presented under 40 CFR 68.115. 40 CFR 68.115(b)(1) and (2)(i) indicate that toxic and flammable substances in a mixture do not need to be considered when determining whether more than a threshold quantity is present at a stationary source if the concentration of the substance is below one percent by weight of the mixture.

Based on the information provided by WM in their Part 71 application, the TLF currently has no regulated substances above the threshold quantities in this rule; therefore, is not subject to the requirement to develop and submit a risk management plan. However, WM has an ongoing responsibility to submit this plan IF a substance is listed that the total source has in quantities over the threshold amount or IF the total source ever increases the amount of any regulated substance above the threshold quantity.

I. 40 CFR Part 71: Emergency Provisions

In this draft Part 71 renewal permit, the EPA is not including the “Emergency Provisions” located in permit condition III.O. of the existing effective Part 71 permit. These provisions were modeled on the “Emergency provision” contained in the regulations in 40 CFR Part 71 applicable to federal operating permit programs. Specifically, in the regulations discussing the contents of Title V operating permits issued under the federal operating permits program, 40

CFR 71.6(g) provides that certain “emergency” events can constitute “an affirmative defense in an action brought for non-compliance” with certain emission limits contained in the permit, when certain conditions are met. However, nothing in the CAA or 40 CFR Part 71 requires that these types of emergency provisions be included as conditions in operating permits issued by the EPA, and for the reasons discussed below, we are exercising our discretion not to include them in this draft Part 71 renewal permit.

In 2014, a federal court ruled that the CAA does not authorize the EPA to create affirmative defense provisions applicable to certain enforcement actions. *See NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014). The court ruled that Sections 113 and 304 of the CAA preclude the EPA from creating affirmative defense provisions in the Agency's regulations imposing HAP emission limits on sources. The court concluded that those affirmative defense provisions purported to alter the jurisdiction of federal courts generally provided in the CAA to assess liability and impose penalties for violations of emission limits in private civil enforcement cases, and that the CAA did not provide authority for the EPA to do so. Consistent with the reasoning in the *NRDC v. EPA* court decision, the EPA has determined that it is also not appropriate under the CAA to alter the jurisdiction of the federal courts through affirmative defenses provisions in its Title V regulations, such as those contained in the emergency provisions of 40 CFR 71.6(g), and that such provisions are inconsistent with the CAA. In light of the above-described D.C. Circuit Court decision and the EPA's obligation to issue Title V permits consistent with the applicable requirements of the Act, it is no longer appropriate to propose to include permit conditions modeled on affirmative defenses such as those contained in the emergency provisions of 40 CFR 71.6(g) in operating permits issued by the EPA.

Although the EPA views the Part 71 emergency provisions as discretionary (i.e., neither the statute nor the regulations mandate their inclusion in Part 71 permits), the EPA is considering whether to make changes to the Part 71 Permit Program regulations in order to ensure the EPA's regulations are consistent with the recent D.C. Circuit decisions; and if so, how best to make those changes. Until that time, as part of the normal permitting process, it is appropriate for the EPA permitting authorities to rely on the discretionary nature of the existing emergency provisions to continue to choose not to include permit terms modeled on those provisions in Part 71 permits that we are issuing in the first instance or renewing. By doing so, we are not only fulfilling the EPA's obligation to issue Title V permits consistent with the applicable requirements of the Act, but are also helping to ensure that permittees do not continue to rely on permit provisions that have been found legally invalid.

III. EPA Authority

Title V of the CAA requires that the EPA promulgate, administer, and enforce a federal operating permit program when a state does not submit an approvable program within the time frame set by Title V or does not adequately administer and enforce its EPA approved program. On July 1, 1996 (61 FR 34202), the EPA adopted regulations codified at 40 CFR part 71 setting forth the procedures and terms under which the agency would administer a federal operating permit program. These regulations were updated on February 19, 1999 (64 FR 8247) to incorporate the EPA's approach for issuing federal operating permits to stationary sources in Indian country.

As described in 40 CFR 71.4(a), the EPA will implement a Part 71 program in areas where a state, local, or tribal agency has not developed an approved Part 70 program. Unlike states, tribes are not required to develop operating permits programs, though the EPA encourages tribes to do

so. See, e.g., Indian Tribes: Air Quality Planning and Management (63 FR 7253, February 12, 1998) (also known as the “Tribal Authority Rule”). Therefore, within Indian country, the EPA will administer and enforce a Part 71 federal operating permit program for stationary sources until a tribe receives approval to administer their own operating permit program.

IV. Use of All Credible Evidence

Determinations of deviations, continuous or intermittent compliance status, or violations of the permit are not limited to the testing or monitoring methods required by the underlying regulations or this permit; other credible evidence (including any evidence admissible under the Federal Rules of Evidence) must be considered by the Permittee and the EPA in such determinations.

V. Public Participation

A. Public Notice

As described in 40 CFR 71.11(a)(5), all Part 71 draft operating permits must be publicly noticed and made available for public comment. The public notice of permit actions and public comment period is described in 40 CFR 71(d).

There will be a 30 day public comment period for actions pertaining to this draft permit. Notification will be given for this draft permit by mailing a copy of the notice to the permit applicant, the affected states, tribal and local air pollution control agencies, the city and county executives, and the state and federal land managers which have jurisdiction over the area where the source is located. A notification will also be provided to all persons who have submitted a written request to be included on the mailing list.

If you would like to be added to our mailing list to be informed of future actions on this or other CAA permits issued in Indian country, please send an email using the link for Region 8 CAA permit public comment opportunities at <http://www.epa.gov/caa-permitting/caa-permit-public-comment-opportunities-region-8>, indicating you would like to be added to the list for permit actions on the Skull Valley Indian Reservation, or send your name and address to the contact listed below:

Part 71 Permitting Lead
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8P-AR)
Denver, Colorado 80202-1129

Public notice will be published in the Tooele Transcript Bulletin and Salt Lake Tribune giving opportunity for public comment on the draft permit and the opportunity to request a public hearing.

B. Opportunity to Comment

Members of the public will be given an opportunity to review a copy of the draft permit prepared by the EPA, the application, this Statement of Basis for the draft permit and all supporting materials for the draft permit. Copies of these documents are available at:

Tooele County Clerk Office
47 N Main St.
Tooele, UT 84074

and

Skull Valley Band of Goshute Indians
1198 North Main Street
Grantsville, UT 84029
Phone: 435-882-4532

and

U.S. Environmental Protection Agency, Region 8
Air Program Office
1595 Wynkoop Street (8P-AR)
Denver, Colorado 80202-1129
Phone: 303-312-6043

All documents are available for review at the EPA Region 8 office Monday through Friday from 8:00 a.m. to 4:00 p.m. (excluding federal holidays). Electronic copies of the draft permit, statement of basis and permitting record may also be viewed at:

<http://www.epa.gov/caa-permitting/caa-permit-public-comment-opportunities-region-8>.

Any interested person may submit written comments on the draft Part 71 operating permit during the public comment period to the Part 71 Permitting Lead at the address listed in Section A above, or by email using the instructions on the public comment opportunities web site address listed above. All comments will be considered and answered by the EPA in making the final decision on the permit. The EPA keeps a record of the commenters and of the issues raised during the public participation process.

Anyone, including the applicant, who believes any condition of the draft permit is inappropriate should raise all reasonable ascertainable issues and submit all arguments supporting their position by the close of the public comment period. Any supporting materials submitted must be included in full and may not be incorporated by reference, unless the material has already been submitted as part of the administrative record in the same proceeding or consists of state or federal statutes and regulations, EPA documents of general applicability or other generally available reference material.

The final permit will be a public record that can be obtained upon request. A statement of reasons for changes made to the draft permit and responses to comments received will be sent to all persons who comment on the draft permit. The final permit and response to comments document will also be available online at: <https://www.epa.gov/caa-permitting/caa-permitting/public-comment-opportunities-region-8>.

C. Opportunity to Request a Hearing

A person may submit a written request for a public hearing to the Part 71 Permitting Lead, U.S. EPA Region 8, by stating the nature of the issues to be raised at the public hearing. Based on the number of hearing requests received, the EPA will hold a public hearing whenever it finds there

is a significant degree of public interest in a draft operating permit. The EPA will provide public notice of the public hearing. If a public hearing is held, any person may submit oral or written statements and data concerning the draft permit.

D. Appeal of Permits

Within 30 days after the issuance of a final permit decision, any person who filed comments on the draft permit or participated in the public hearing may petition to the Environmental Appeals Board (EAB) to review any condition of the permit decision. Any person who failed to file comments or participate in the public hearing may petition for administrative review, only if the changes from the draft to the final permit decision or other new grounds were not reasonably foreseeable during the public comment period. The 30-day period to appeal a permit begins with the EPA's service of the notice of the final permit decision.

The petition to appeal a permit must include a statement of the reasons supporting the review, a demonstration that any issues were raised during the public comment period, a demonstration that it was impracticable to raise the objections within the public comment period, or that the grounds for such objections arose after such a period. When appropriate, the petition may include a showing that the condition in question is based on a finding of fact or conclusion of law which is clearly erroneous; or, an exercise of discretion, or an important policy consideration that the EAB should review.

The EAB will issue an order either granting or denying the petition for review, within a reasonable time following the filing of the petition. Public notice of the grant of review will establish a briefing schedule for the appeal and state that any interested person may file an amicus brief. Notice of denial of review will be sent only to the permit applicant and to the person requesting the review. To the extent review is denied, the conditions of the final permit decision become final agency action.

A motion to reconsider a final order shall be filed within ten days after the service of the final order. Every motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration shall be directed to the Administrator rather than the EAB. A motion for reconsideration shall not stay the effective date of the final order unless it is specifically ordered by the EAB.

E. Petition to Reopen a Permit for Cause

Any interested person may petition the EPA to reopen a permit for cause, and the EPA may commence a permit reopening on its own initiative.

The EPA will only revise, revoke and reissue, or terminate a permit for the reasons specified in 40 CFR 71.7(f) or 71.6(a)(6)(i). All requests must be in writing and must contain facts or reasons supporting the request. If the EPA decides the request is not justified, it will send the requester a brief written response giving a reason for the decision. Denial of these requests is not subject to public notice, comment, or hearings. Denials can be informally appealed to the EAB by a letter briefly setting forth the relevant facts.